Overview of Native American Gambling Legal and Regulatory Issues

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Introduction

Indian gambling has evolved from high-stakes bingo games at a few reservations to the potential for Las Vegas style casinos all over the United States that generate billions of dollars in revenue. The conflicts related to Indian gambling play out in both the political and legal arenas of the federal, state and tribal governments and they have significant ramifications to counties and municipalities. Legislators, governors, prosecutors, judges, lawyers, lobbyists and grass roots organizations are engaged in the debate, and it continues to test the relationships of these governments and their responsibilities to each other.

Tribal Sovereignty: Its Meanings and Limits

Gambling is the latest battleground for tribal sovereignty. "Sovereignty" is a word with many interpretations, and it is used frequently and loosely in the debate over Indian gambling. The most basic definition refers to the inherent right or power to govern. This concept is at the core of the tensions between federal, state, and tribal governments over Indian gambling.

Prior to the arrival of Europeans to North America, Indian tribes were sovereigns that conducted their own affairs and were not dependent on outside sources of power to legitimize their acts of government.[1] During the colonization of America, the British Crown dealt formally with the Indian tribes as foreign sovereign nations. Britain and several of its colonies entered treaties with various tribes. As the colonies grew in strength and population, it became apparent that individual colonists were encroaching upon Indian lands. In order to avoid prolonged and expensive wars with Native Americans, the Crown increasingly assumed the position of protector of the tribes. When the colonies revolted against Britain, nearly all of the tribes allied themselves with the Crown.[2]

Upon independence from Britain, the new nation found itself confronted with the same conflicts between the European settlers and Native Americans that the Crown had faced. If Indian affairs were left to the individual states, it was feared that territorial conflicts would result in new wars with the Indian tribes that the United States, exhausted from the revolution, was in no position to fight. The Constitution was therefore drafted so that the federal government would have responsibility for Indian affairs.[3] Congress

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[1] William C. Canby, Jr., *American Indian Law*, West Publishing Co., 1988, at 66.
[2] Id. at 10.
[3] Id.

was granted the power to "regulate commerce with the Indian Tribes," while the President was empowered to make treaties with the consent of the Senate.[4]

By treating the tribes as foreign nations and by leaving them to regulate their own internal affairs, the colonial powers and later, the federal government, recognized the tribes as sovereign nations.' The status of the tribes was further defined through a series of Supreme Court cases in the early 1800's known as the "Cherokee Cases." These cases limited the concept of sovereignty and described Indian tribes as "domestic dependent nations," whose independence was restricted in two areas: the power to convey their land and the right to deal independently with foreign powers.[6] For all internal matters, however, the tribes were sovereign and free from state intrusion.[7]

For about 150 years following the Cherokee Cases, no additional limitations were placed on tribal sovereignty. Then, in 1978, the Supreme Court, in Oliphant v. Suquamish Indian Tribe,' decided the issue of whether a tribe had the power to exercise criminal jurisdiction over non-Indians on its reservation. The tribe argued that Congress could not usurp its criminal authority because it was sovereign with respect to matters on tribal land. The Court disagreed, however, and held that criminal jurisdiction over non-Indians was inconsistent with the tribes' status as domestic dependent nations.[9] This decision opened the door for additional judicial limitations on tribal sovereignty.

The current interpretation of "sovereignty" varies depending on the issue and the source consulted. Many now describe the tribes as sovereign dependent nations, possessing inherent governmental power over all internal affairs." Although states are precluded from interfering in tribal self-government, tribes are subordinate to Congress which, of course, is comprised of representatives of the states.

Although Congress can unilaterally modify or even nullify treaties with Indian tribes, the federal government has a trust responsibility to the tribes that has been analogized by some to the relationship between a guardian and her ward." For instance, Native Americans have a right to inhabit the lands retained by them through treaties or otherwise, but the tribes do not actually hold title. The land belongs to the federal government, which holds it in trust for the tribes."

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[4] U.S. Const. Art. I, § 8, cl. 3; Art. II, § 2, cl. 2.
[5] See Canby, supra, note 1, at 66.
'Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1(1831), at 16.
[7] *See* Canby, supra, note 1, at 68.
[8] 435 U.S. 191 (1978).
[9] *See* Canby, supra, note 1, at 70.
[10] Id. at 7 1. Except, of course, criminal jurisdiction over non-Indians.
[11] Victoria Loe Hicks, Declarations of Indcnendencc: Indians renew claims to Self-government in Response to Congressional Threats, The *Dallas Morning News, May 10,* 1998, at 1-J.
Many Native Americans dislike the characterization of the relationship between the tribal and federal governments as "ward" to "trustee," because they feel it has not served them well, even when federal trustees have acted in good faith.
[12] Id.

The Legal Historv of Indian Gambling:

Two factors caused the initial explosion of Indian gambling in the late 1980's: the landmark 1987 U.S. Supreme Court decision in California v. Cabazon Band of Mission Indians[13] and the Indian Gaming Regulatory Act of 1988 (IGRA).[14]

California v. Cabazon Band of Mission Indians

In Cabazon, the Cabazon and Morongo Bands of Mission Indians operated bingo and card games on their reservations in California. These operations, open to the public and frequented mostly by non-Indians, offered bingo games with prizes larger than California law allowed. Both the State of California and Riverside County attempted to enforce state and local regulations against the tribes' enterprises. The lower court held that neither the state nor the county had any authority to enforce gambling laws on the reservations.[15]

On appeal, the U.S. Supreme Court concluded that a state could only interfere in Indian gambling activities if the state. law that was violated was criminal or prohibitory, rather than civil or regulatory, because only then did it violate state public policy.[16] Since California allowed charitable bingo, the Court held that the law at issue was civil or regulatory and thus unenforceable on tribal lands. In effect, Cabazon recognized a federal common law right of tribes to engage in gambling activities on Indian land, free of most state regulation, and allowed them to set their own rules for any kind of gambling already permitted by the state."

The Indian Gaming Regulatory Act

In order to understand the IGRA, it is useful to examine the history behind the Act. In both the Senate and the House of Representatives of the 98th Congress, various bills were introduced and hearings were held to address Native American gambling, with the belief that tribes were fearful that gambling rights would be curtailed drastically by the pending Supreme Court decision in Cabazon. The ruling, which favored tribal interests, came as a surprise to both the tribes and the opponents of tribal gambling.[18] The tribes subsequently became much less amenable to compromise, and opposed federal legislation that could limit the Cabazon decision."

Following the Cabazon decision, Congress and President Reagan enacted the Indian Gaming Regulatory Act in 1988. Recognizing that states have interests in matters

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[13] California v. Cabazon Band **of Mission** Indians, 480 U.S. 202 (1987).
[14] 25 U.S.C. § 2701 (1988).
[15] Kathryn R.L. Rand, Steven A. Light. Do "Fish and Chins" Mix? The Politics of Indian Gaming in Wisconsin, *The Gaming Law Review*, Apr. 1998 at 129. 13 1.
[16] Anthony N. Cabot ct. al., *Federal Gambling Law* at 200 (forthcoming 1998).
[17] Thorn Cole, Indian Gambling on the Table, State *Legislatures*, July/Aug. 1997, at 40.
[18] See Cabot, supra note 16, at 20 1.
[19] Id.

that occur within their boundaries, the IGRA required tribes to negotiate with states prior to operating casino-style gambling.

Many tribes complained that the law infringed on their sovereignty and right to self-govern. Likewise, most Indian law experts view the IGRA as a victory for the states since it granted the states a role in negotiating the scope and regulation of gambling on Indian lands within their boundaries. Under Cabazon, the states had little power to regulate gambling on tribal land. This shift of power to the states was a major blow to tribal interests.[20] For this reason, many tribes view the IGRA, not as the source of tribal gambling rights, but rather as an infringement on tribal sovereignty.*' Nevertheless, the IGRA is widely regarded as the beginning of the modem era of Indian gambling.[22]

Regulation of Indian Gambling

The Compacting Process

Under the IGRA, a tribe that wishes to operate certain types of casino-style gambling must request that the state negotiate with them to form an agreement known as a compact.[23] Upon receiving a request, the state is obliged to "negotiate with the Indian tribe in good faith to enter into such a compact."[24] Compacts may include the criminal and civil laws and regulations that will apply to the activity; the allocation of criminal jurisdiction between the state and the Indian tribe for the enforcement of such laws and regulations; the revenue assessment by the state as may be necessary to defray the costs of regulating Indian gambling; taxation by the Indian tribe of gambling in amounts comparable to amounts assessed by the state for comparable activities; remedies for breach of contract; and standards for the licensing, operation and maintenance of the gambling facility.

The IGRA provides that if a state refuses to negotiate in good faith, a tribe can file a "bad faith" lawsuit in federal district court to force the state to come to the bargaining table. If the court finds that the state has failed to negotiate in good faith, it must order the state and the tribe to form a compact within 60 days.[25] If the state and the tribe fail to conclude a compact within that period, each party must submit its last best offer to a court-appointed mediator, who will select one of the two proposals.[26]

If the state consents to the proposal selected by the mediator, it is treated as a tribal-state compact." If the state does not consent, the IGRA provides that the Secretary

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[20] U.S. v. Spokane Tribe of Indians, 1998 U.S. App. Lexis 5978 at § 6 (Mar. 27, 1998).
[21] Rebecca Tsosie, Negotiating Economic Survival: The Consent Principle and Tribal-State Compacts Under the Indian Gamine Regulatory Act, *Ariz. St. L.J.*, 25, at 49 (Spring 1997).
[22] Lien v. Three Affiliated Tribes, 93 F.3d 1412. 1414 (8th Cir. 1996).
[23] 25 U.S.C. 2710 (d)(3)(A).
[24] 25 U.S.C. 2710 (d)(3)(A). The "good faith" requirement is imposed only on the states and not on the tribes.
[25] 25 U.S.C. 2710(d)(7)(B)(iii).
[26] 25 U.S.C. 2710 (d)(7)(b)(vi).
[27] Id.

of the Interior may prescribe procedures for certain types of casino-style gambling.[28] A 1996 Supreme Court[29] decision has effectively removed the process to compel negotiation or mediation, however. This decision, and the provision allowing the Department of Interior to promulgate alternative procedures, are the subject of considerable controversy and will be addressed below.[30]

The Department of Interior

The Secretary of the Interior's duties include approving tribal/state compacts; placing land into trust for gambling; approving revenue allocation plans for per capita payments of gambling net revenues to tribal members; approving of agreements for services relative to Indian lands; and approving gambling-related land leases.[31]

The National Indian Gaming Commission

The NIGC is an independent commission under the Department of Interior and is responsible for ensuring that tribal gambling is conducted in compliance with the IGRA and the NIGC's regulations. It has regulatory responsibility for 188 tribes running 285 gambling operations in ***28*** states. The IGRA stipulates that before a tribe can operate certain types of casino gambling on reservation land, it must adopt a gambling ordinance that is approved by the Chairman of the NIGC. The NIGC is responsible for monitoring compliance with these ordinances and for reviewing and approving various gambling reports on tribes' bingo and casino operations.

State and Tribal Regulation

The IGRA requires that tribes create gambling commissions to oversee their own casino operations and to work with state gambling regulators. In practice, the day to day oversight of casino gambling is left to the states and tribes to negotiate and implement. The compacts identify the party that will be responsible for licensing, monitoring, and enforcing the gambling activities in compliance with tribal-state compacts.[32]

The IGRA Classification System

The regulatory system under the IGRA divides gambling into three different categories that are regulated differently.

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[28] 25 U.S.C. 2710 (d) (7) (B) (viij.

[29] Seminole Tribe of Florida v. Florida, 116 S. Ct. 1114 (1996).

[30] See Cole, supra note 17, at 41.

[31] Kevin Cover, Assistant Secretary of Indian Affairs, Dcpartmcnt of the Interior, Statement Before the Senate Committee on Indian Affairs on S. 1870, The Proposed Indian Gaming Regulatory Improvement Act of 1988, Apr. 1, 1998.

[32] General Accounting Office, Casino Gaming Regulation: Roles of Five States and the National Indian Gamine Commission, May 15, 1998, at 1.

Class *I*: Class I gambling is social gambling for minimal prizes and includes traditional Native American games. These may be operated by the tribe without restrictions.[33]

Class II: Class II gambling is regulated jointly by the tribe and the NIGC, and does not require a compact with the state. It includes bingo, pull-tabs, bingo-like games, and non-banking card games such as poker. A tribe may conduct, license, and regulate Class II gambling if (1) the state in which the tribe is located permits such gambling for any purpose by a person or organization; and (2) the governing body of the tribe adopts a gambling ordinance which is approved by the NIGC.[34]

Class III: Class III gambling is regulated by the tribes, states and the NIGC, and it includes all forms of gambling not included in either Class I or Class II, such as, banking card games, roulette, and blackjack. Slot machines and "electronic or electromechanical facsimiles" of any game of chance are excluded from Class II, and are therefore Class III.

The NIGC regulations define "electronic or electromechanical facsimile" as any gambling device as defined in The Johnson Act. The Johnson Act is a federal law intended to limit the proliferation of slot machines. Therefore, any device which fits the definition of "gambling device" under The Johnson Act is excluded from Class II gambling and is therefore illegal unless agreed to in a tribal-state compact.[35]

Class III games are permissible under the IGRA only if, (1) the state in which the tribe is located permits such gambling; (2) the tribe and the state have negotiated a tribal-state compact that has been approved by the Department of the Interior; and (3) the tribe has adopted a gambling ordinance that has been approved by the NIGC.[36]

Acquisition of Land in Trust

Some tribal casinos are located off reservation on lands held in trust for the tribes by the federal government. Tribes are able to use off-reservation land for casinos in limited circumstances because of the trust relationship between the federal government and the tribe, and because of a provision of the IGRA that provides for taking land in trust for casinos.

The trust relationship, as it pertains to real property, has a long history. Under the General Allotment Act of 1887, which remained in effect until 1934, Congress decided that many reservations, which had always been shared by all members of a given tribe, should be divided into 160-acre parcels. Each family received a parcel with the idea that Native Americans would become self-sufficient farmers, no longer dependent on the federal government. Much of the land was ill suited to farming, however, and the tribes

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[33] Id.
[34] Ask the Regulators, What are the Three Classes of Gaming?, *Indian Gaming*, Apr./May 1998. at 21.
[35] Id.
[36] 25 U.S.C. § 2703, et *seq.*, and § 2710 *et. seq.*

often lacked the necessary farming skills. Many of the farms failed, and tens of millions of acres of reservation land were subsequently sold by tribal members to non-Indians.

Today, many reservations encompass privately owned land, and thousands of non-Indians live or operate businesses on Indian lands.[37] This further complicates issues of sovereignty and self-government because any interaction that occurs on a reservation such as taxation, property transactions, regulatory decisions, and law enforcement may turn on whether the parties are Indian or non-Indian, and whether the interaction occurred on tribal or private land.[38] Congress' intention in creating trust land was to prevent the continued sale of Indian lands to non-Indians, and to keep it from being usurped by states or private individuals. The Bureau of Indian Affairs within the Department of the Interior must now approve the sale of trust land.[39]

The prime structural hindrance to economic development on reservations has been trust land.[40] While trust lands have helped tribes retain a land base and some cultural integrity, they also make it difficult to attract industry and commercial enterprises to the reservation. Industries can only lease trust land, and banks are often unwilling to lend money for construction on the reservation because they may be unable to repossess in case of default. Furthermore, some non-Indian entrepreneurs may be reluctant to risk subjecting themselves to the authority of tribal governments and courts. As a result, what economic stability there was often came from a system of leasing tribal lands in large quantities to non-Indian farmers and ranchers, providing only a minimal income for the reservation residents and resulting in an inefficient use of the land.[41]

Until gambling began to flourish on Indian reservations, tribes were caught in a paradox where the system that ensured their cultural identity through preserving their land base also promoted poverty by limiting the use of that land. Gambling provided an alternative industry, which, because it was not resource dependent, helped maintain tribal control over the land while still creating jobs and bringing in outside revenues. Consequently, tribes began acquiring new land for gambling operations that would be held in trust by the federal government, in locations that would better attract gambling customers."

The IGRA placed limitations on the ability of tribes to acquire new lands for gambling which has resulted in considerable litigation. While the IGRA generally prohibits land acquired by tribes after the date of enactment to be used for gambling, there are significant exceptions. For instance, if the tribe has no reservation land and the new land is within the tribes last recognized reservation; or, if the trust lands are part of a

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[37] See, Hicks, supra, note 11.
[38] Id.
[39] Anne Merline McColloch, The Politics of Indian Gamine: Tribe/State Relations and American Federalism, *Publius: The Journal of Federalism* (Summer 1994), at 104 [hereinafter "McColloch"].
[40] Id.
[41] McColloch, ***citing,*** Vine Deloria, Jr., Land and Natural Resources. Minority Report: What Has Happened to Blacks. Hispanics, American Indians, and Other Minorities in the Eighties, New York: Pantheon. 1984, at 152-190.
[42] Id.

settlement of a land claim; or, if the land in trust transfer is approved by the Secretary of Interior and by the state governor, it may be taken into trust by the federal government so that a tribe may use it for gambling operations.[43]

States' Rights

Some provisions of the IGRA have been problematic for state governments because the law maintains the historical concept of tribes as sovereigns, without addressing important issues associated with state sovereignty.[44] For instance, states are not empowered to act against Indian tribes if the tribes are operating gambling establishments without a compact, or in violation of a compact. Only the federal government has enforcement power and, in some instances, the federal government has chosen not to act.

States cannot tax tribal gambling revenue or impose a property tax on gambling facilities unless it is allowed through the compacts, but they are required to provide some form of regulatory oversight of Indian Class III casino games.[45] Tribes are exempt from local taxes and local regulations such as zoning, building, and environmental codes, but state and local governments must provide and service the infrastructure that makes the Indian reservation valuable for casino development. For local municipalities, this may mean that huge casinos with hotels, restaurants, and parking garages do not fall within their jurisdiction, but that they are nonetheless required to deal with the consequences. These may include the impacts of the building, design, and location of the gaming facility; the public safety and health issues; the need for additional law enforcement or other public services; and the environmental effects of casinos.[46]

Although there is no standard formula set-forth in the IGRA, some states have negotiated with tribes for a percentage of gambling revenues to pay for the collateral impacts of casinos on Indian lands. Other compacts stipulate that the tribe must share the costs of police, fire, hospitals, and roads." These arrangements vary from compact to compact.

Constitutionality

An issue stemming from the IGRA that has been particularly controversial is the constitutionality of the federal government requiring states to negotiate with tribes for Class III gambling, and allowing the tribes to sue the states if they allege that the state did not negotiate in good faith. Many states have objected to these procedures based on the Eleventh Amendment to the United States Constitution.

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[43] 25 USC $2719 cr. seq.

[44] *See* Cole, supra note 17, at 4 1. This issue is the subject of a June 1998 California State Supreme Court decision. discussed *infra*.

[45] Delores Brosnan, Indian Policy, Indian Gaming, and the Future of Tribal Economic Development, *American Review of Public Administration*, June 1996.

[46] Kathleen McCormick, In the Clutch of the Casinos, *Planning*, June 1997, at 4-9.

[47] Id.

The Eleventh Amendment

The Eleventh Amendment reads, 'The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State."[48] The Amendment was ratified in 1795 as a result of Chisholm v. Georgia[49] in which the U.S. Supreme Court allowed a citizen from South Carolina to sue the State of Georgia in federal court. The decision caused a great uproar among the states, which feared a rash of lawsuits. In order to protect state sovereign immunity, the Eleventh Amendment was ratified to prevent states from being sued.[50]

Seminole Tribe of Florida v. Florida

In recent years, the Court began to question just how explicit the language of a congressional statute must be in order to be an unconstitutional abrogation of state sovereign immunity." Three U.S. District Court cases brought by tribes against states when compact negotiations broke down were dismissed on the basis of the Eleventh Amendment, despite explicit language within the IGRA allowing for suits by tribes in federal court against states that do not bargain in good faith.[52] By 1995, federal courts were split on the issue of whether the IGRA abrogated the states' Eleventh Amendment immunity. In 1996, the Supreme Court, in Seminole Tribe of Florida v. Florida, resolved conflicting United States Court of Appeals decisions when it ruled that the Eleventh Amendment prohibits Congress from allowing tribes to sue states in federal court.[53]

In effect, Seminole gutted the provision of the IGRA allowing tribes to sue states for bad faith negotiations. Now, if a state asserts an Eleventh Amendment defense to a lawsuit by a tribe alleging that they have not negotiated in good faith, the case may be dismissed, and there is no further recourse for the tribe.

Recent Developments

On April 18, 1996, the Secretary of the Interior announced his intention to issue an Advanced Notice of Proposed Rulemaking on the question of the authority of the Department of Interior in those cases where a state raises an Eleventh Amendment defense to a "bad faith" law suit under the IGRA.[54] In January of 1998, Secretary Babbitt proposed a rule allowing the Secretary to prescribe, as a matter of regulatory law, Class III gambling procedures for a tribe where a federal court has dismissed the tribe's suit

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[48] U.S. Const. amend. XI.
[49] 2 Dallas 419 (1793).
[50] See McColloch, supra, note 39, at 107.
[51] Id.
[52] Id. at 108.
[53] 116 S. Ct. 1114 (1996). At issue in the case was 25 U.S.C. § 2701 (d)(7)(A) of IGRA, which authorizes Indian tribes to sue states in the federal district courts to enforce the states' obligation to negotiate a gaming compact in good faith.
[54] Thomas F. Gede, Special Assistant Attorney General, Office of the California Attorney General. Statcmcnt to the Committee on Indian Affairs, United States Senate, May 9, 1996.

against a state on Eleventh Amendment grounds (a so-called "by-pass" provision). Last month, Secretary Babbitt met in Washington with tribal leaders and representatives of governors and attorneys general to discuss these proposed administrative rules.[55]

On June 19, 1998, twenty-five attorneys general from states with Indian gambling set-forth their opposition to the proposed rule in a letter to Secretary Babbitt. These attorneys general assert that the by-pass provision is an attempt to usurp regulatory power from the states where the IGRA does not allow it, and to provide an unfair procedure for dispute resolution by a federal official that has a trust responsibility to one of the parties in the dispute -- the tribes. The attorneys general favor the possibility of a statutory by-pass amendment to IGRA, but only if accompanied by standards to protect state public policy concerns.[56] Negotiations on this matter between the Department and state and tribal officials continue.

Indian Gambling in California

Indian gambling issues have been particularly controversial in California. Although not typical of the compacting process in most other states, the developments in the last several months are illustrative of how Indian gambling pits state and federal authority against tribal sovereignty, and how public policy surrounding this issue can be simultaneously influenced by private interest groups, judicial decisions, and the legislative and initiative/referendum processes.

During most of California Governor Pete Wilson's two-term tenure (which ends in January 1999) he has refused to negotiate compacts with tribes already offering certain gambling devices, such as slot machines, without first having a compact with the state. Governor Wilson's administration based their position on the fact that the estimated 13,000 to 15,000 slot machines already operated by some tribal casinos were illegal under California's constitution.[57] The NIGC agreed that the gambling machines at issue were illegal, but the U.S. Attorneys in three of California's four districts put enforcement activity on hold, pending negotiations between the Governor and the Pala Tribe of Mission Indians who do not yet have gambling operations.

On March 6, 1998, Governor Wilson signed a compact with the Pala Tribe, the first and only tribe to have a compact with California, which is intended as a model for future tribal gambling compacts with the state. It stipulates that an Indian tribe may operate up to 975 video gambling devices (which do not yet exist -- they are in development) similar to those operated by the state lottery, rather than those at Las Vegas-style casinos. In order to attempt to force tribes with casinos to share some of

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[55] Rachel Solkin, Babbitt Talks with States, Tribes on Gamine Laws, *Albuquerque Tribune*, June 30, 1998, at D-8.

[56] Letter from Florida Attorney General Robert A. Butterworth to Secretary of the Interior Bruce Babbitt, (June 19, 1998). Attorneys General from the following states also signed the letter: Alabama, Arizona, California, Colorado, Connecticut, Hawaii, Idaho, Indiana, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Missouri, Montana, Nebraska, Nevada. Ohio. Oklahoma. Rhode Island, South Dakota, Utah, Wisconsin, and Wyoming.

[57] California Tribal Gaming Initiative Trouhics Analysts, *National Gaming Summary*, June 29, 1998, at 3.

their profits with other tribes that are not in the gambling business, the compact would allocate 199 of the new type machines to every tribe in the state. Those that do not want to operate a casino could then rent their allotment to the tribes that do have casinos.[58]

Governor Wilson declared that tribes not willing to accept the terms of the Pala Tribe compact would have to shut down their slot machines before they could negotiate their own compacts, or face seizure of the machines by federal marshals.[59] The Pala Tribe compact created a furor of protest among most other tribes who objected to being excluded from negotiations, and to language that would subject tribal gambling facilities to state or local laws ranging from workers compensation and union bargaining rights, to local health, environmental, and building codes. Most tribes refused to comply with Governor Wilson's demands, saying that they infringed upon their sovereignty.

In April 1998, more than 50 California Indian tribes packed the Department of the Interior's hearing in Sacramento to testify to their opposition to the Pala Tribe compact.[60] Nonetheless, Kevin Gover, Assistant Secretary of the Department of the Interior for Indian Affairs, approved the compact.

Subsequently, several California tribes organized Proposition 5, also known as the "California Indian Self-Reliance Initiative," for the November 3, 1998 state ballot. The proposal would mandate that the governor sign tribal gaming compacts at the tribes' request, and specifies the terms of tribal-state compacts. It would also allow continued use of slot machines by California tribes that do not have a compact with the state.

A group of California tribes formed an organization called Californians for Indian Self-Reliance to promote the measure. Opponents have responded by forming the Coalition Against Unregulated Gambling,which includes business, labor, law enforcement, religious and entertainment industry groups. Funded by contributions from the Nevada gambling industry, California horseracing tracks, and others, the coalition said it would wage a competitive advertising campaign to counter the efforts of Indian gambling tribes.[61] News reports estimate that at least $50 million will be spent on the campaign.[62]

Governor Wilson contends that he had the authority to sign a compact with the Pala Tribe without legislative approval. However, California State Senators John Burton (D-San Francisco) and Ken Maddy (R-Fresno) sponsored a bill that, if enacted, would have ratified the Pala Tribe compact, supported Governor Wilson's negotiation process, and made it difficult for other tribes to secure separate agreements.[63] The bill passed the

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[58] **Edward Walsh, States Try to Rein In Tribal Gamino Boom: Financial Stakes Rising Dramaticallv As Indian-Run Casinos Take in Billions,** *The Washington Post,* **Apr. 12, 1998, at A-9.**

[59] *See* **Buttcrworth supra note 56.**

[60] **Court Rules Governor Acted Illegally; Rules Pala Compact Invalid; Legislators Call On Assembly to Kill Pala Bill,** *PR Newswire,* **June 25, 1998.**

[61] **Advertising New Front for Indian Gaming War,** *Ventura County Star,* **June 24, 1998 at A-l.**

[62] **Sam Delson, At least $50 million seen as Cost of Gaming Initiative,** *The Press-Enterprise,* **June 24, 1998.**

[63] **Agua Calicntc Band of Cahuilln Indians Blasts Decision to Accent Governor Wilson's Back-Door Gaming Agreement,** *Business Wire.* **Apr. 27,1998.**